Mr. Dwight Ink
Executive Director
Personnel Management Project
U. S. Civil Service Commission
1900 E Street, N. W.
Washington, D. C. 20415

Dear Mr. Ink:

We have reviewed Option Papers Numbers Four, "Federal Government Labor-Management Relations", and Five, "Federal, State, and Local Interaction in Personnel Management". The nature of our mission, as well as Executive Orders, precludes our interaction with state and local government; therefore, we have no substantive comments on Option Paper Number Five.

As regards Option Paper Number Four (Federal Government Labor-Management Relations) the Central Intelligence Agency is excepted from the Federal Labor-Management Relations Program under provisions of Executive Order No. 11491.

The nature and sensitivity of CIA's mission dictate that such exception be continued and incorporated in any changes contemplated for the Federal Labor-Relations Program.

Sincerely,

F. W. M. Janney
Director of Personnel

Distribution:
Orig - Adse
2 - D/Pers
1 - OP/P&C
1 - A/DDCI (Info Copy)

STAT OP/P&C/[redacted]:cmc(60ct77)
Retyped:OD/Pers:ljc(130ct77)

TRANSMITTAL SLIP	DATE 23 SEP 1971
TO: Executive Registry	
ROOM NO.	BUILDING
REMARKS:	
FROM: AD/Pers	
ROOM NO.	BUILDING / EXTENSION

FORM NO 241 1 FEB 55 REPLACES FORM 36-8 WHICH MAY BE USED. (47)

Executive Summary/Outline

OPTION PAPER NUMBER FOUR
FEDERAL GOVERNMENT LABOR-MANAGEMENT RELATIONS

Part 1. CENTRAL ORGANIZATION
FOR LABOR-MANAGEMENT RELATIONS AND PUBLIC INTEREST CONCERNS

I. Organization of a Central Authority for administration of the Federal labor-management relations program

PROBLEM: Central administration of the present program is vested by Executive Order in a part-time Federal Labor Relations Council (FLRC), composed of 3 top Government managers, with some important functions delegated to the Assistant Secretary of Labor for Labor-Management Relations (A/SLMR). Traditionally, central administration of other labor-management relations programs has been vested in a full-time "neutral" board or authority. The managerial structure and part-time nature of the FLRC are criticized as principal defects of the labor relations program under E. O. 11491.

OPTIONS:
1. Retain current organizational arrangements, either in law or E.O.
2. Alter composition of Federal Labor Relations Council.
3. Establish an independent authority with integrated functions.
4. Extend NLRB coverage.

IMPLEMENTING ACTION REQUIRED: Option 3 or 4 would require legislation or Congressionally-sanctioned reorganization. Option 2 may require legislation, with some action possible through Executive order.

RELATED ISSUES:
1. Composition of authority: neutral or tripartite.
2. Powers of central authority and judicial review.
3. One or several "central" authorities.
4. Representation of the "public interest."

II. Recognition

PROBLEM: In the Federal program, a labor organization must achieve exclusive recognition in an appropriate unit of employees before it is entitled to negotiate for those employees. Under E.O. 11491, exclusive recognition is won by secret ballot election supervised by the A/SLMR. Other methods

for granting recognition are also employed in other labor relations systems. The election requirement of E.O. 11491 has been criticized as unduly restrictive, expensive and time-consuming. Others believe the election process is the best guarantee of employee freedom of choice.

OPTIONS:
1. Voluntary recognition.
2. Card-check certification.
3. Secret ballot.
4. Choice of these options as alternatives.

IMPLEMENTING ACTION REQUIRED: No legislation is necessary. All of the above options are amenable either to administrative action or adjustments in the E.O.

III. Unfair Labor Practices

PROBLEM: The Federal labor-management relations program has adopted, with some adjustments, the basic unfair labor practice (ULP) provisions of the National Labor Relations Act (NLRA). Overall, such provisions are well understood and accepted, both as to substance and enforcement. However, unlike the NLRA procedures, each complainant in a ULP dispute under E.O. 11491 is responsible for prosecuting his/her own case before an administrative law judge. This means that in some cases ULP records may be misleading or incomplete, may not address the issues, may be unnecessarily long, etc. As a result, the cost of litigation, both to the parties and to the Government, may be excessive. Moreover, inconsistencies in the quality of representation may result in poor presentations, making administrative justice in some meritorious cases more difficult to administer. Although the 1975 review of the E.O. authorized independent ULP investigations by the A/SLMR, he is not permitted to prosecute these cases on behalf of the complainant, as is done by the General Counsel of the National Labor Relations Board (NLRB) in the private sector.

OPTIONS -- ENFORCEMENT:

1. Retain current system.
2. Provide for prosecution by A/SLMR or an independent authority.
3. Provide for court enforcement by complainant.

IMPLEMENTING ACTION REQUIRED: The present FLRC could institute Option 2 through a change in the Assistant Secretary's regulations. An independent authority would require legislation, as would court enforcement under Option 3, or sanctioned reorganization.

IV. Standards of Conduct

PROBLEM: In the private sector, union members are guaranteed rights to democratic participation in the internal affairs of their labor organization by the 1959 Labor-Management Reporting and Disclosure Act (LMRDA). Furthermore, that law places certain fiduciary and reporting responsibilities on the officers of labor unions to ensure that they act in the interests of their members. While unions representing Federal employees are subject to standards of conduct generally equivalent to those applied by law in the private sector, the E.O. provision lacks the direct remedies, court enforcement, and judicial review that would be available under the LMRDA.

OPTIONS: 1. Retain current provisions.
2. Provide for LMRDA coverage.

IMPLEMENTING ACTION REQUIRED: Option 2 would require legislation.

V. Organization for handling negotiability questions

PROBLEM: Negotiability questions arise under the E.O. program when one party submits a contract proposal at the bargaining table which the other contends is contrary to law, regulation, or the Order. These questions are resolved first by referring the disputed proposal to the agency head for determination and, if he finds the proposal to be nonnegotiable, by appealing this determination to the FLRC for decision. Where interpretations of the Federal Personnel Manual (FPM), of law, or of government-wide policy are central to the resolution of negotiability issues, the FLRC practice is to go to the authoritative source for its comments -- e.g., CSC, the Comptroller General, etc. This process may be time-consuming and delay agreement negotiations. Where management rights are at issue, negotiability decisions by the FLRC may have an appearance of bias -- warranted or not -- due to its management composition.

OPTIONS: 1. Retain current system.
2. Maintain current system with altered FLRC.
3. Provide for resolution of all such questions through unfair labor practice procedure.
4. Provide for single, special, expedited procedure by independent administrative authority.

IMPLEMENTING ACTION REQUIRED: Option 3 could be accomplished by Executive Order. Option 2 might be by E.O. or, like Option 4, might require legislation.

VI. Relationship between grievance and appeal systems

PROBLEM: Numerous overlapping, and sometimes conflicting, statutory grievance and appeal systems are now available to Federal employees, depending on the subject matter of their complaints. In addition, E.O. 11491 authorizes bilaterally negotiated grievance and arbitration procedures for represented employees, excluding only matters subject to a statutory appeal system. Thus, Federal employees may face a confusion of forums in processing their complaints, and effectuation of their rights may often depend on their ability to properly classify the nature of their claims. Managers may be deterred from taking necessary and appropriate personnel actions because of the multiplicity of procedural requirements which must be met before such actions may be sustained if and when an appeal process is invoked by an affected employee. Generally, "make-whole" remedies are unavailable to Federal employees unless the requirements of the Back-Pay Act are met -- an issue subject to interpretation by the Comptroller General. Therefore, there is general dissatisfaction with the present grievance and appeals systems.

OPTIONS:
1. Continue current systems.
2. Permit negotiation of procedures to cover all but certain specified appeals.*
3. Permit negotiation of full-scope grievance arbitration covering all appeals (ULP procedure available, if applicable).
4. Permit employee to elect appeal route: grievance procedure, or statutory procedure, or ULP.

IMPLEMENTING ACTION REQUIRED: Legislation would be required to permit negotiated grievance procedures to cover statutory appeal systems matters. Complete "make-whole" remedies would also require legislation.

---

*Appeals on FLSA, EEO, classification, political activity, etc., might be handled through systems other than the negotiated grievance procedure, although there is wide support to make the negotiated procedure as inclusive as possible. Alternatives to the present appeals systems per se are being treated by Task Force #4 and other PMP studies.

Part 2. ORGANIZATION OF THE FEDERAL EMPLOYER FOR MANAGEMENT UNDER LABOR-MANAGEMENT RELATIONS: EMPLOYEE/EMPLOYER RELATIONSHIPS

I. Organization of the employer for management effectiveness

PROBLEM: Definition of the employer for purposes of collective bargaining is one of the biggest problems in Federal labor-management relations. Authority to make policy is separated between the Executive and Congress, subject to judicial review, and it is further dispersed within the Executive Branch, with the results that (a) management is fragmented and cannot speak with an effective voice in bilateral relations, and (b) most big issues, such as pay and benefits, are beyond the scope of bargaining, resulting in negotiations focusing largely on a narrow range of management discretion and the shifting of union actions to other arenas outside the collective bargaining process. Management leadership within the Executive Branch isn't integrated at the central level and is uneven at agency levels, with labor-management relations sometimes functioning as just another overlay of complicated procedures--an add-on to already complex personnel administration provisions.

OPTIONS:
1. Retain the present structure.
2. Establish central Executive Branch management leadership with (a) creation of a central labor relations office to provide general management leadership, and (b) possible changes in pay-setting machinery.
3. Within agencies, elevate responsibilities for labor relations and related personnel functions to more integral levels of management organization.

IMPLEMENTING ACTION REQUIRED: Option 2 could be achieved through Congressionally-sanctioned reorganization, with legislative action required for substantive changes in pay-setting machinery. Option 3 could be accomplished by Executive Order or possibly administrative action under the present E.O.

II. Mechanisms for dealings

PROBLEM: Depending on the issues to be discussed, several forums are currently available and being utilized by Government management and Federal unions to resolve matters affecting Federal employees. Not all of these discussions, however, constitute "collective bargaining" as that term is used in the Federal labor relations program, since E.O. 11491 excludes bargaining on a range of "bread-and-butter" issues determined pursuant

to law or controlling regulations. Such matters of vital concern to Federal employees, including questions of pay and compensation, are dealt with in arenas established by such law or other authority. As the scope of permissible negotiations continues to expand, the present mechanisms for dealing may prove to be inadequate, and different frameworks for union-management dealings may have to be instituted.

OPTIONS:
1. Bargaining unit negotiations.
2. Master agreements (government-wide or agency-wide), with local supplements.
3. Multi-tiered, multi-unit, coalition bargaining.
4. Unit structures in agencies plus other mechanisms at the central level (i.e., FPRAC, Pay Agent, President, Congress, etc.).

IMPLEMENTING ACTION REQUIRED: Government-wide master agreements under Option 2 might be authorized through Executive Order revision, Congressionally-sanctioned reorganization, or through legislation. Substantial revision or expansion in central-level mechanisms under Option 4 would require legislation.

III. Unit Structure

PROBLEM: Excessive unit fragmentation has been a persistent problem in the Federal labor relations program. In many instances, the unit structure and level of exclusive recognition bear no reasonable relationship to the employer's discretionary authority over bargainable topics under E.O. 11491. Although the present philosophy of the labor-management program favors reduced unit fragmentation, where such unit economies are not possible a need exists to accommodate the unit structure to the appropriate organizational level of the agency to facilitate meaningful bargaining.

OPTIONS:
1. Retain the present system.
2. Apply unit criteria and bargaining experience to merge existing units.
3. Establish units in the program charter (Executive Order/ statute).

IMPLEMENTING ACTION REQUIRED: Only Option 3 would require Executive order/or legislation. Option 2 could be by administrative action or may require change in the E.O.

REORGANIZATION PROCESS CONSIDERATIONS: It appears that existing recognitions, agreements and dues-withholding arrangements should be honored to the maximum extent possible pending final resolution of unit

issues in agency reorganizations.

EXCLUSION OF SUPERVISORS: It appears also that supervisors should be fully integrated and identified with agency management and should be excluded from units covering the employees they supervise. Unions argue, however, that the present definition of "supervisor," as applied, is too exclusionary and locks many whose interests are more closely aligned with the rank-and-file out of bargaining units with them.

IV. Union Security

PROBLEM: Achievement of exclusive status means that the labor organization must represent all employees in the bargaining unit fairly and equitably, without regard to their membership or nonmembership in the organization--including negotiating agreements with the employer covering all unit employees. In the private sector, there is statutory authorization for the negotiation of arrangements which require payment of union dues as a condition of employment, or lesser forms of union security (except in those states which expressly forbid such contracts). In the Federal sector, however, it is argued that due to the special regard for employment conditioned only on merit, employees have the right to refrain from union membership or assistance--i.e., they may not be imposed as a condition of Federal employment. There is little or no union support for any arrangement short of the agency shop as the option on union security. Unions see the agency shop as the quid pro quo for the duty of fair representation of all unit employees.

OPTIONS:
1. Continue the present prohibition of the agency shop.
2. Mandate the agency shop.
3. Authorize negotiation of the agency shop.
4. Authorize variations of an agency shop.

IMPLEMENTING ACTION REQUIRED: Legislation appears to be required to authorize agency shop.

Part 3. SCOPE OF BARGAINING

I. General scope of bargaining

PROBLEM: The scope of bargaining is narrowed by the exclusion of pay and benefits and by policies controlled by CSC in most personnel areas and by other central-management agencies -- minimizing opportunities for meaningful trade-offs and focusing negotiations on areas of management discretion.

OPTIONS:
1. Continue the current scope of bargaining.
2. Maintain the current scope of bargaining, but modify and expand consultation procedures in pay setting to include benefits determinations -- total compensation consultation.
3. Expand the scope of bargaining at the central level of the national government to include pay and/or benefits determinations.
4. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now within the authority of central-management agencies --e.g., certain personnel regulations issued by CSC.
5. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now proscribed by certain laws, including some central personnel system matters.

IMPLEMENTING ACTION REQUIRED: Options 2 - 5 would require legislation, with relatively long-term developmental leadtime (1979-80) for total compensation consultation or bargaining.

II. Management Rights

PROBLEM: "Management rights" is a term which refers to those powers vested in management which bear a reasonable relationship to its ability to carry out its responsibilities. Although such matters are generally negotiable in the private sector, since the inception of the Federal labor relations program in 1962 "management rights" have comprised an express exclusion to the employer's bargaining obligation under the Order. Unions believe that these reserved rights unduly restrict the scope of negotiations under the Order, and constitute additional evidence of the Order's perceived management bias. Agencies, on the other hand, argue for a continuation of an exclusion of management rights from negotiations on the ground that fundamental differences between the public and private employer require that these essential management tools not be subject to the vagaries of the bargaining process.

OPTIONS:
1. Shift certain subjects enumerated in Section 11(b) to Section 12(b).
2. Maintain the subjects enumerated in Sections 11(b) and 12(b) of the E.O. on reserved management rights.
3. Reduce the subjects of these Sections.
4. Eliminate these Sections.

IMPLEMENTING ACTION REQUIRED: Option 2 or 3 could be by Executive order.

III. Productivity, Quality of Working Life, and Labor-Management Relations

PROBLEM: Productivity improvement is a commonly accepted goal in the Federal government. But while some constructive efforts have been undertaken bilaterally to improve productivity and quality of working life, those efforts have been relatively few. Productivity bargaining in its technical definition appears inapplicable in Federal labor-management relations -- i.e., restrictive work-rules have not been a pattern in negotiations and economic trade-offs are not possible. But there is a place for bilateral efforts to improve productivity and quality of working-life through consultation committees.

OPTION: Bilateral Consultation Committees.

IMPLEMENTING ACTION REQUIRED: No changes are required in labor-management relations provisions. Bilateral leadership is needed.

Part 4. IMPASSE RESOLUTION

I. Organization for Impasse Resolution

PROBLEM: Present FSIP provisions and its "arsenal of weapons" approach evoke general satisfaction for agency-level impasse procedures. If the scope of bargaining should be enlarged to include central level matters, such as pay, appropriate new procedures would be required.

OPTIONS -- CENTRAL GOVERNMENT-WIDE IMPASSES:

1. Current procedures.
2. Expansion of current procedures.
3. Tripartite or neutral advisory arbitration panel.
4. Binding arbitration.

OPTIONS -- AGENCY-LEVEL IMPASSE RESOLUTION: (not mutually exclusive)

1. Mediation and "med-arb."
2. Fact-finding with recommendations.
3. Compulsory binding arbitration.

IMPLEMENTING ACTION REQUIRED: Legislation and/or sanctioned reorganization would be required for central impasse procedures. Present FSIP probably requires no change. Administrative action may improve existing third-party processess.

RELATED ISSUES: 1. Aspects of Congressional control.
2. The public's interest in Federal bargaining and impasse resolution.

II. Federal government strikes, picketing, and other job actions

PROBLEM: Strikes by Federal employees, although not unknown, continue to be rare. Such job actions by Federal workers are now illegal, and there is no apparent groundswell of support by the parties to the Federal labor relations program, including employees, to alter this statutory policy. On the other hand, recent court decisions have established a First Amendment right of Federal employees to engage in peaceful informational picketing of their employer in a labor-management dispute in most instances, with an exception being drawn for picketing conduct which actually interferes with, or reasonably threatens to interfere with, Government operations. The express language in the current E.O. which attempted to circumscribe all picketing in a labor-management dispute has thus been nullified, and a more limited policy, based on a case-by-case review by the FLRC, is now in effect.

OPTION: Draft a narrower provision to ban picketing which actually interferes with (disrupts), or reasonably threatens to interfere with (disrupt), Government operations; which creates an impermissible work stoppage; or which aids in achievement of an unlawful objective.

IMPLEMENTING ACTION REQUIRED: Revision of Section 19(b)(4) of E.O. 11491.